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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,810	03/28/2006	Nobuo Miyadera	396.46073X00	9359

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EXAMINER

BEDTELYON, JOHN M

ART UNIT	PAPER NUMBER
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2874

MAIL DATE	DELIVERY MODE
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04/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/573,810	Applicant(s) MIYADERA ET AL.	
	Examiner JOHN M. BEDTELYON	Art Unit 2874	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-21, 24, 25 and 28.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Kevin S Wood/
Primary Examiner, Art Unit 2874

Continuation of 11. does NOT place the application in condition for allowance because:

The Applicant argues that the finality of the office action was not proper because the claimed amendment filed 08/08/2007 contained an amendment to the claims that should have been expected to be claimed.

The Examiner respectfully disagrees. The claims were amended with limitations that were not included in the original claims as filed, and thusly were not reasonably expected to be incorporated into the independent claim.

Next, Applicant argues that the Okushima reference does not reasonably teach the input waveguide has a curved structure as the curve is not taught in the specification and the drawings are not engineering drawings.

The Examiner respectfully disagrees that a curved input waveguide is not taught. While the specification may be silent to the input waveguide having a curved structure, multiple drawings (including figures 2, 7, and 10) clearly show the input waveguide is curved.

Applicant argues that at least figure 4 shows that the optical waveguide 11 does not contain a curve and therefor the waveguide 11 as seen in figure 2 is not curved.

The Examiner respectfully disagrees. Figure 4 shows only a small portion of the input waveguide, not including the curved portion as clearly evident in figures 4, 7, and 10.

Applicant argues that the rejection of claims 19 and 20 are not proper because the offset of the Okushima reference is much larger than the offset of the instant application.

The Examiner respectfully disagrees with this reasoning. The rejection is based on the obviousness of selecting the desired offset based on the fact that Okushima teaches an offset. Without a clear showing of why selecting a desired offset would not be obvious, e.g. an unexpected result, selecting the desired offset to be in a specific range is determined to be obvious to one of ordinary skill in the art.

Lastly, Applicant argues that the combination of the Okushima and Ido references is not proper because Ido teaches away from the use of the device to change an asymmetric light input to symmetric light outputs.

The Examiner respectfully disagrees with this reasoning. Ido teaches that a notch in the multimode waveguide portion can change the ratio of the output light intensity, and it is this structure and teaching that forms the basis of the obviousness rejection, not the method of using Ido to change symmetric input light into asymmetric output light.